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February 29, 1996

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FEB 29 1996

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.--Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Trinity Broadcasting of Florida, Inc.
Miami, Florida
MM Docket No. 93-75

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

On February 28, 1996, we filed a "Reply to Exceptions" in the above-referenced proceeding on behalf of Trinity Broadcasting of Florida, Inc., and Trinity Broadcasting Network.

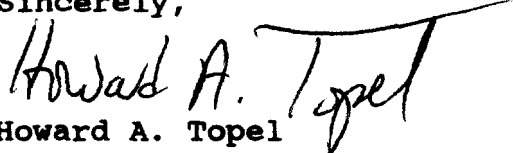
We are writing at this time to correct two word processing errors that appeared in that Reply. First, on page 2, the word "disqualification" was omitted at the end of the last line of the first paragraph.

Second, on page 14, the word "not" was omitted after the word "does" in the next to last line on the page. The substance of both those matters is correctly stated in the first paragraph of the Summary that was included with the "Reply to Exceptions."

Accordingly, we are enclosing herewith an original and 11 copies of corrected pages 2 and 14 of TBF and TBN's "Reply to Exceptions." We respectfully request that those corrected pages be associated with that Reply.

Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,


Howard A. Topel

HAT/jt
Enclosures

cc: All Parties on Certificate of
Service to Reply

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**I. The Bureau Urges an Erroneous Standard of
Review for the Trinity Qualification Issues**

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In its exceptions, the Bureau asserts that the denial of Trinity's renewal application should be affirmed because that aspect of the ID is "supported by substantial record evidence." MMB Exc. at 1-2. However, that is the wrong standard of review. That is the standard of *judicial* review of agency decisions, not the standard of *agency* review of Initial Decisions. By urging the wrong standard, the Bureau -- for no reason at all -- reverses its own previously-stated position that the evidence in this case does not warrant TBF's disqualification.

It is well settled that the "substantial evidence" test applies to *judicial* review of a Commission action, not to internal agency review of an ALJ's decision. Radio Carrollton, 69 FCC 2d 424, 425 (1978) (Commission does not review ALJ's decision under the "substantial evidence" standard used by courts when they review agency decisions); Universal Camera Corp v. NLRB, 340 U.S. 474 (1951) (substantial evidence is standard of judicial review); Greater Boston Television Corp., 444 F. 2d 841 (D. C. Cir. 1970) (same). The "substantial evidence" standard is used in judicial proceedings because, since the court does not review the administrative record *de novo*, it must affirm as long as the agency's decision has substantial support in the record and therefore is not arbitrary. In contrast, the Commission and Review Board do undertake *de novo* review of the record when reviewing Initial Decisions. Adjudicatory Reregulation Proposals, 56 FCC 2d 527, 536 (1975). Thus, the correct standard here is not whether substantial evidence can be found that supports the ALJ's disqualification of TBF, but whether the *preponderance* (i.e., the greater weight) of the evidence calls for disqualification. Radio Carrollton, *supra* (preponderance of the evidence test used in administrative proceedings); Northhampton Media Associates, 3 FCC Rcd 5164, 5169 (Rev Bd.

In any event, the programming listed in TBF's quarterly reports *did* substantially address the needs of the Miami community. Glendale lists TBF's 35 "top issues" from five separate ascertainment surveys. Statement at 6-8. Of those 35 issues, TBF broadcast programming addressing 26 (or 74%) in the same quarter they were listed as major issues in ascertainment survey results. Id. Many of the issues not addressed in the *same* quarter were addressed in other quarters. For example, while TBF did not list any programs about transportation in its quarterly report for the third quarter of 1988 (id. at 7), it did address that issue in the second quarter of that year (TBF Ex. 33, Tab H, pp. 126-27). Similarly, while TBF did not address "Pollution/Environment" in the fourth quarter of 1987, it did address that issue in 1989. GL Exc. at 6. Overall, it is clear from the record that TBF's public service programming during the license term was directly responsive to the ascertained needs of the Miami community.

III. CONCLUSION

In sum, TBF's record of community ascertainment, issue-responsive programming , and outstanding public service to the community during the license term clearly entitles TBF to a license renewal expectancy.

Moreover, the Mass Media Bureau's incomprehensible switch to an erroneous legal standard for the Trinity qualification issues and its consequent erroneous conclusion must be disregarded. As the Bureau correctly urged in its proposed findings and conclusions below, the record does not warrant disqualification of TBF. The disqualification of TBF must therefore be reversed.